

48A C.J.S. Judges § 181

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

VI. Authority, Powers, and Duties

H. Particular Judges

1. Successor Judges

b. Authority to Reconsider and Change Predecessor's Decision

§ 181. View that successor judge has authority

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  32

There is authority holding that a successor judge may reconsider and set aside or otherwise change a predecessor's interlocutory rulings, findings of fact, and conclusions of law and that a successor judge may grant relief from the judgment of a predecessor, either upon proper motion or sua sponte.

Although there is authority to the contrary,¹ it has been held that a successor judge may reconsider and set aside or otherwise change a predecessor's interlocutory rulings,² as well as findings of fact³ and conclusions of law,⁴ as long as the transcript of the proceedings before the predecessor is sufficient.⁵ Moreover, there is authority holding that a successor judge may grant relief from the judgment of a predecessor, either upon proper motion or sua sponte.⁶

In this regard, it has been reasoned that because all courts have the inherent power to vacate their judgments during the term in which those judgments are rendered,⁷ the action of one judge, sitting as the court, may have the effect of altering or setting aside a previous ruling by another judge sitting as the same court.⁸ In addition, the reasoning is that the parties should not be required to wait until appeal for reconsideration of a ruling simply because the judge who made the ruling has become unavailable, and a successor has been appointed to hear the case.⁹

Statutes or rules authorizing a successor judge to perform duties upon the disability or death of a predecessor judge after findings of fact or conclusions of law have been filed¹⁰ have also been construed as granting authority to a successor judge to reconsider

a predecessor's decision.¹¹ However, a rule providing that a successor judge may perform duties upon the disability or death of a predecessor judge after findings of fact or conclusions of law have been filed does not allow a successor to reconsider a predecessor's decisions where the predecessor is not unavailable to reconsider those rulings himself or herself.¹²

Injunctive relief.

A successor judge could reconsider a prior judge's denial of a motion for a preliminary injunction where the prior judge made legal errors in concluding that the plaintiff lacked standing to pursue its complaint.¹³

Under a rule providing that for a specified time period from entry of judgment, a court has unrestricted discretion to revise the judgment, a successor judge may render a valid judgment denying permanent injunctive relief in a trial on the merits of a petition for permanent injunctive relief, despite the fact that another judge previously entered an order granting injunctive relief in the case in a proceeding conducted pursuant to a petition for interim relief.¹⁴

CUMULATIVE SUPPLEMENT

Cases:

In the Third Circuit, there are three exceptions to the law of the case doctrine that permit reconsideration of an issue previously decided: (1) when a successor judge may entertain a timely motion to reconsider the conclusions of an unavailable predecessor, (2) when new evidence is available the second time the issue is raised, and (3) when a supervening decision has changed an applicable rule of law. [In re Florimonte](#), 599 B.R. 497 (Bankr. M.D. Pa. 2019).

Trial judge, as successor judge, had the authority to rule on defendant's motion to vacate directed at the final summary judgment entered by the predecessor judge, and thus the trial court's denial of the motion, based on his determination that he lacked such authority, was error. [Fla. R. Civ. P. 1.540](#). [Samoilova v. Loginov](#), 330 So. 3d 1041 (Fla. 3d DCA 2021).

Successor judge had inherent authority to vacate predecessor judge's interlocutory order denying law firm's motion for partial summary judgment in legal malpractice arising from a judgment issued against client for her guaranty to cover amount owed on promissory note; a final judgment had not yet been entered when successor judge revisited issue of client's lost-note theory. [Jain v. Buchanan Ingersoll & Rooney PC](#), 322 So. 3d 1201 (Fla. 3d DCA 2021).

Pretrial detainee who allegedly acted as a go-between in a murder for hire scheme was not entitled to an evidentiary hearing on her third motion for pretrial release following mistrial, despite COVID-19 pandemic; predecessor judge held day-long evidentiary hearing on first motion, successor judge summarily denied third motion and found predecessor judge had considered facts related to mistrial and testimony at trial when it ruled on detainee's second motion, detainee showed no change in conditions that would compel successor judge to revisit ruling of predecessor judge, and detainee received adequate care and was not at risk of contracting COVID-19. [Fla. Const. art. 1, § 14](#); [Fla. Stat. Ann. § 903.046\(2\)](#); [Fla. R. Crim. P. 3.131\(b\)\(3\)](#). [Magbanua v. McNeil](#), 310 So. 3d 138 (Fla. 1st DCA 2021).

Successor judge who took over docket of assigned judge who became unavailable after close of bench trial had evidence to make findings of fact and conclusions of law necessary to enter judgment in employee's favor on his wrongful termination claim; findings that employee's termination was not in compliance with the terms of the parties' employment agreement and that employer did not have reasonable cause to terminate plaintiff were based on transcripts, exhibits, and evidence during trial, and no crucial credibility determinations were necessary. Rules Civ.Proc., Rule 63(B). [Landa v. CampusEAI, Inc.](#), 2016-Ohio-298, 58 N.E.3d 462 (Ohio Ct. App. 8th Dist. Cuyahoga County 2016).

Successor judge had the authority to overturn the decision of his predecessor denying the Department of Transportation's summary judgment motions with regard to construction contractor's claims for breach of contract and consequential damages; successor judge became convinced that his predecessor had erred in denying the Department's motions, and if he was right in that assessment, it would make no sense to require him to let the case go to trial. *Build, Inc. v. Utah Department of Transportation*, 2018 UT 34, 428 P.3d 995 (Utah 2018).

[END OF SUPPLEMENT]

Westlaw. © 2023 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

- 1 View that successor lacks authority, see § 184.
- 2 U.S.—*Stoffels ex rel. SBC Telephone Concession Plan v. SBC Communications, Inc.*, 677 F.3d 720, 82 Fed. R. Serv. 3d 631 (5th Cir. 2012), cert. denied, 133 S. Ct. 318, 184 L. Ed. 2d 155 (2012).

Ala.—*Swafford v. Norton*, 992 So. 2d 20 (Ala. Civ. App. 2008).

Cal.—*Golin v. Allenby*, 190 Cal. App. 4th 616, 118 Cal. Rptr. 3d 762 (6th Dist. 2010), as modified on denial of reh'g, (Dec. 23, 2010).

Conn.—*Hudson Valley Bank v. Kissel*, 303 Conn. 614, 35 A.3d 260 (2012).

Fla.—*State v. Pablo-Ramirez*, 61 So. 3d 488 (Fla. 2d DCA 2011).

Ga.—*Barngrover v. City of Columbus*, 292 Ga. 486, 739 S.E.2d 377 (2013).

Iowa—*U.S. Bank v. Barbour*, 770 N.W.2d 350 (Iowa 2009).

Mass.—*Prestige Imports, Inc. v. South Weymouth Sav. Bank*, 75 Mass. App. Ct. 773, 916 N.E.2d 1015, 71 U.C.C. Rep. Serv. 2d 191 (2009).

N.C.—*France v. France*, 738 S.E.2d 180 (N.C. Ct. App. 2012), review denied, 740 S.E.2d 479 (N.C. 2013).

3 Minn.—*Kornberg v. Kornberg*, 542 N.W.2d 379 (Minn. 1996).

N.D.—*Paulson v. Meinke*, 352 N.W.2d 191 (N.D. 1984).

4 Mass.—*Tompson v. Department of Mental Health*, 76 Mass. App. Ct. 586, 924 N.E.2d 747 (2010).

Minn.—*Brown v. Commissioner of Revenue*, 322 N.W.2d 194 (Minn. 1982).

N.Y.—*People v. Hampton*, 21 N.Y.3d 277, 970 N.Y.S.2d 716, 992 N.E.2d 1059 (2013).

N.D.—*Paulson v. Meinke*, 352 N.W.2d 191 (N.D. 1984).

5 N.Y.—*People v. Hampton*, 21 N.Y.3d 277, 970 N.Y.S.2d 716, 992 N.E.2d 1059 (2013).

W. Va.—*Coleman v. Sopher*, 201 W. Va. 588, 499 S.E.2d 592 (1997).

6 W. Va.—*Allen v. Allen*, 212 W. Va. 283, 569 S.E.2d 804 (2002).

A.L.R. Library
Power of successor judge taking office during term time to vacate, set aside, or annul judgment entered by his or her predecessor, 51 A.L.R.5th 747.

- 7 Cal.—*In re Marriage of Nicholas*, 186 Cal. App. 4th 1566, 113 Cal. Rptr. 3d 629(4th Dist. 2010).
- Ill.—*Stevens v. Village of Oak Brook*, 2013 IL App (2d) 120456, 371 Ill. Dec. 614, 990 N.E.2d 802 (App. Ct. 2d Dist. 2013).
- Ind.—*Harper v. State*, 963 N.E.2d 653 (Ind. Ct. App. 2012), decision clarified on reh'g, 968 N.E.2d 843 (Ind. Ct. App. 2012) and transfer denied, 971 N.E.2d 1214 (Ind. 2012).
- N.M.—*State ex rel. Regents of New Mexico State University v. Siplast, Inc.*, 1994-NMSC-065, 117 N.M. 738, 877 P.2d 38 (1994).
- 8 Cal.—*In re Marriage of Nicholas*, 186 Cal. App. 4th 1566, 113 Cal. Rptr. 3d 629 (4th Dist. 2010).
- Colo.—*Colorado Republican Party v. Benefield*, 2011 WL 5436483 (Colo. App. 2011), cert. granted, 2012 WL 4478961 (Colo. 2012).
- Ill.—*Stevens v. Village of Oak Brook*, 2013 IL App (2d) 120456, 371 Ill. Dec. 614, 990 N.E.2d 802 (App. Ct. 2d Dist. 2013).
- Iowa—*Madden v. City of Eldridge*, 661 N.W.2d 134 (Iowa 2003).
- 9 Minn.—*Kornberg v. Kornberg*, 542 N.W.2d 379 (Minn. 1996).
- 10 See § 179.
- 11 W. Va.—*Coleman v. Sopher*, 201 W. Va. 588, 499 S.E.2d 592 (1997).
- 12 Alaska—*Gallagher v. Gallagher*, 866 P.2d 123 (Alaska 1994).
- 13 Ill.—*Travelport, LP v. American Airlines, Inc.*, 2011 IL App (1st) 111761, 354 Ill. Dec. 879, 958 N.E.2d 1075 (App. Ct. 1st Dist. 2011).
- 14 Md.—*Maryland Bd. of Nursing v. Nechay*, 347 Md. 396, 701 A.2d 405 (1997).